

AN ORDINANCE approving the  
awarding of Reference #2ISD056  
by the City of Fort Wayne,  
Indiana, by and through its  
Department of Purchasing and  
CYBORG SYSTEMS, INC. for  
Information Systems Department.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE  
CITY OF FORT WAYNE, INDIANA;

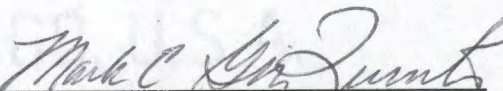
SECTION 1. That Reference #2ISD056 between the City of  
Fort Wayne, by and through its Department of Purchasing and  
CYBORG SYSTEMS, INC. (only source vendor) for the Information  
Systems Department, is hereby ratified, and affirmed and  
approved in all respects, respectfully for:

the Annual Fees for Payroll and Human  
Resource Software Maintenance for  
Information Systems Department;

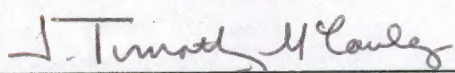
involving a total cost of Twenty-Nine Thousand and no/100  
Dollars (\$29,000.00).

SECTION 2. Prior Approval has been requested from Common  
Council on NOVEMBER 10, 1992. Two copies of said Reference are  
on file with the Office of the City Clerk and made available for  
public inspection, according to law.

SECTION 3. That this Ordinance shall be in full force and  
effect from and after its passage and any and all necessary  
approval by the Mayor.

  
Council Member

APPROVED AS TO FORM  
AND LEGALITY

  
J. Timothy McCaulay, City Attorney

REF NO.: 2ISD056

DEPT.: Information System Department

DATE: 10/26/92

ITEM/SERV.: Annual Fees for Payroll & Human Resource Software  
Maintenance

**PURCHASING INFORMATION**

ADVERTISED BID: No

DATES ADVERTISED:

OPENING DATE:

WRITTEN QUOTE: No

DUE DATE:

VERBAL QUOTE: No

SINGLE SOURCE: Yes

NO. OF VENDORS NOTIFIED:

NO. OF VENDORS RECEIVING BID:

NO. OF VENDORS RETURNING BID:

NO. OF VENDORS DISQUALIFIED: 0

NO. OF VENDORS NOT RESPONDING: 0

DATE SENT TO DEPT. FOR RECOMM.:

DATE RECOMM. REC'D IN PURCH.: 10/23/92

**COUNCIL INFORMATION**

DATE INFOR SENT TO LAW DEPT.: 11/04/92

INTRODUCTION DATE:: 11/10/92

DISCUSSION DATE: 11/17/92

PASSAGE DATE: 11/24/92

ORDINANCE NO.:

AMOUNT APPROVED AND/OR SPENT LAST YEAR:  
(IF APPLICABLE)

**CYBORG SYSTEMS, INC.**

P.O. BOX 41876  
CHICAGO, ILLINOIS 60641-9998

SEND ALL OTHER CORRESPONDENCE TO:  
2 N. RIVERSIDE PLAZA  
CHICAGO, ILLINOIS 60606

**INVOICE**

NUMBER	51769N
DATE	08/31/92
PAGE	1

SOLD TO City of Fort Wayne  
ATTN: Shelly Raugh  
One Main St., Rm. B-16  
Fort Wayne, IN 46802

SHIP TO

CUSTOMER P.O. NO.	CUSTOMER NO.	SHIP VIA	F.O.B.	SALESPERSON	ORDER NO.	ORDER DATE	TERMS	DATE DUE	CASH DISCOUNT	
	P61090			Gingery	51769N	08/31/92	Due 11/1/92		0.00	
LOC.	ITEM NUMBER	DESCRIPTION	QTY. ORDERED	QTY. SHIPPED	QTY. BACKORDERED	UNIT	UNIT PRICE	AMOUNT		
			DUPLICATE INVOICE							
	PR/HR Maintenance	11/1/92 - 10/31/93	1.00					29000.00		

# Cyborg Systems, Inc.

CHICAGO  
DALLAS  
ATLANTA  
NEW YORK  
LOS ANGELES  
PHILADELPHIA  
TORONTO, CANADA

## AGREEMENT

THIS AGREEMENT is made and entered into this        day of December 19 84,  
by and between CYBORG SYSTEMS, INC. (the lessor, hereinafter referred to as CYBORG), and  
City of Fort Wayne City Utilities  
1 Main Street  
Fort Wayne, IN 46815

(the lessee, hereinafter referred to as the CUSTOMER).

That, for and in consideration of the mutual agreements and covenants hereinafter contained, the parties hereto agree as follows:

1. The CUSTOMER agrees to acquire and CYBORG agrees to grant to the CUSTOMER the right to use the following named modules which are owned by CYBORG:

### PAYROLL/PERSONNEL/ON-LINE

(hereinafter referred to as the CYBORG SYSTEM), subject to the terms and conditions set forth in this agreement for a period of ninety-nine (99) years. The CYBORG SYSTEM consists of the computer programs, and detailed user and technical descriptive manuals with associated system and program documentation. At the end of the ninety-nine (99) year use period, complete ownership rights of the CYBORG SYSTEM will revert to the CUSTOMER.

2. It is understood and agreed between the parties hereto that the price of the CYBORG SYSTEM is \$115,000.00, payable by the CUSTOMER as follows:

*MB* Fifty (50%) a. ~~\$57,500.00~~ due upon execution of this agreement.  
*MB* Fifty (50%) b. ~~\$57,500.00~~ due upon delivery of the documentation and source programs, and a demonstration with Cyborg test data on the Customer's computer which is a  
TBM 4341 Utilizing CTCS and 327X Terminals

3. The CUSTOMER agrees that the CYBORG SYSTEM will be used within the CUSTOMER'S data processing facility, currently located at 1 Main Street - Fort Wayne, IN 46815.

The CUSTOMER shall have the right to relocate its data processing facility and use of the CYBORG SYSTEM at such relocated facility without additional payment to Cyborg if such relocation does not result in an increase in the number of the Customer facilities using the system. The CUSTOMER agrees to pay upon delivery of the CYBORG SYSTEM and documentation in any other facility of the CUSTOMER, fifty percent (50%) of the then current price. This sum does not include installation and maintenance services.

4. The price referred to hereinabove does not include any local or State, sales or use taxes, any assessment of which shall be paid by the CUSTOMER.

5. CYBORG warrants the system to operate as described in its documentation and descriptive literature. The CUSTOMER will receive, at no charge, for a period of 18 months commencing upon the delivery date as stated in Paragraph 2b, all enhancements, tax table changes and corrections to any program problems or documentation errors. In order to maintain the warranty, the CUSTOMER must notify CYBORG, immediately, of any problems or potential problems and make available to CYBORG all written and printed documents to substantiate said problem. CYBORG DOES NOT MAKE ANY EXPRESSED OR IMPLIED WARRANTIES EXCEPT AS SET FORTH IN THIS AGREEMENT.

6. CYBORG shall provide to the CUSTOMER 15 days of on-site installation and training services; provided however, that the said site installation and training services must be used by the customer within twelve months of the date of this agreement. The CUSTOMER shall pay reasonable air travel expenses and the reasonable living expenses of CYBORG PERSONNEL while said personnel are engaged in performing services at the CUSTOMER FACILITY. The customer shall have the right to purchase additional services at CYBORG'S then current rates.



7. The CUSTOMER agrees and understands that CYBORG has expended great expense in creating its system and has a definite proprietary interest therein. The CUSTOMER represents, agrees, covenants and promises that it will not re-sell or sub-lease the CYBORG SYSTEM or updates, changes, improvements or enhancements, or any part thereof, and will hold in the strictest fiduciary confidence all materials of CYBORG including but not limited to, the design specifications and associated documentations of the CYBORG SYSTEM. The CUSTOMER further acknowledges and agrees that, in the event of a breach or threatened or anticipatory breach by the CUSTOMER of the provisions of this paragraph, that no adequate remedy at law in money or damages will be available to CYBORG that will fairly compensate CYBORG and therefore CYBORG shall be entitled to an injunction against such breach or anticipatory breach. However, no specification in this agreement of a specific legal or equitable remedy shall be construed as a waiver or prohibition against any other legal remedies in the event of the breach of a provision of this agreement. The representations and warranties contained in this paragraph shall survive the consummation of this transaction and the delivery of any documents hereunder.

8. Subject to the limitation hereafter stated, CYBORG agrees to indemnify and hold the CUSTOMER harmless against any claims by any third person (and costs in connection with defense thereof) resulting from alleged trade secret, patent, trademark or copyright infringement by the CUSTOMER'S use of the CYBORG SYSTEM in accordance with this agreement, provided that CYBORG is notified promptly by the CUSTOMER, in writing, of any action or allegation of infringement and provided further that CYBORG shall have sole control of defense of any such action and all negotiations for its settlement or compromise.

9. CYBORG shall not, without the CUSTOMER'S prior written consent, use or disclose to others any of the CUSTOMER'S technical and accounting data or proprietary confidential information acquired by CYBORG from the CUSTOMER or originating in the installation and maintenance services provided hereunder.

10. This agreement shall not be assignable by the CUSTOMER except together with and as a part of its entire assets, business, and good will as a going concern, and on the condition that upon such assignment the assignee shall expressly assume the CUSTOMER'S obligations hereunder, and shall be subject to all of the terms and conditions of this agreement. Subject to the foregoing, this agreement shall be binding upon and inure to the benefits of the parties, and their respective successors and assigns.

11. Each paragraph and provision of this agreement is severable from the entire agreement, and, if one provision is declared invalid, the remaining provisions shall, nevertheless, remain in effect.

12. The parties acknowledge that there is a great difficulty in ascertaining damages under this agreement and it is therefore agreed that the liability of CYBORG to the CUSTOMER for any losses or damages, whether direct or indirect, arising out of this agreement, shall not exceed the total amount <sup>paid, less</sup> billed or billable to the CUSTOMER. It is further agreed expressly between the parties hereto that in no event shall CYBORG be liable for any indirect, special or consequential damages, such as, but not limited to, loss of anticipated profits or other economic loss in connection with, or arising out of, the services provided for in this agreement with the exception of the indemnification expressed in paragraph 8, this paragraph shall supersede any paragraphs of this agreement which are inconsistent with it as well as any implications to the contrary in any paragraph of this agreement. (except warranties) *WJS MB*

13. The performance by CYBORG of any obligation hereunder shall be excused, if such failure is caused by any event or circumstance beyond CYBORG'S own direct control. If CYBORG should fail to make any delivery provided for herein as a result of any such event or circumstance beyond its own direct control, CYBORG, shall have the right to make delivery within a reasonable time after the cause of such delay has been removed, and the CUSTOMER shall be obligated to accept deferred delivery, it being agreed that upon the occurrence of any such circumstance or event beyond CYBORG'S own control, the time for delivery by CYBORG shall be extended by that number of days equal to the number of days of delay attributable to any such circumstance or event beyond CYBORG'S own direct control. *WJS MB*

14. This agreement shall be governed by and construed with the laws of the State of ~~INDIANA~~ Indiana. *WJS MB*

15. This agreement supersedes all prior agreements and understandings between the parties and may not be changed or terminated orally; and no change, termination or attempted waiver of the provisions hereof shall be binding unless in writing and signed by the party against whom the same is sought to be enforced.

IN WITNESS WHEREOF, the parties hereto, each acting under due and proper authority, have executed this agreement as of the date first above mentioned.

CITY OF FORT WAYNE CITY UTILITIES  
By *Osette R. Simon*  
OSETTE R. SIMON, CITY CONTROLLER  
DIRECTOR OF FINANCE & ADMINISTRATION  
TITLE  
Dec. 20, 1984  
DATE

CYBORG SYSTEMS, INC.  
By *Michael D. Simon*  
President  
TITLE  
December 22, 1984  
DATE

*WJS MB* 16. Cyborg agrees to modify the General Ledger Interface to the L.G.F.S. Specifications.

PAUL HELMKE, MAYOR

## DIGEST SHEET

TITLE OF ORDINANCE: Special

DEPARTMENT REQUESTING ORDINANCE: Purchasing

SYNOPSIS OF ORDINANCE: An ordinance approving the Annual Fees for Payroll & Human Resource Software Maintenance for Information Systems Department. The cost reflects the only source vendor and should be awarded to Cyborg Systems Inc in the amount of \$29,000.00.

IF NOT LOWEST, WHO WAS AND WHY WERE THEY NOT AWARDED:

EFFECT OF PASSAGE: This is the Annual Fees for the City of Fort Wayne's Payroll & Human Resource Software Maintenance. The Maintenance Fee provides periodic program upgrades and technical support for payroll problems. The Maintenance Agreement also protects the City in the case of program failures that effect the production of paychecks.

IF REPLACEMENT, WHAT NECESSITATES:

EFFECT OF NON-PASSAGE: The City of Fort Wayne would be unable to operate an efficient Payroll Program regarding the production of paychecks.

PRIOR APPROVAL REQUESTED: Yes                      DATE: 11-10-92

MONIES INVOLVED:                      Cyborg Systems Inc    \$29,000.00

PRICE AGREEMENT:                      No

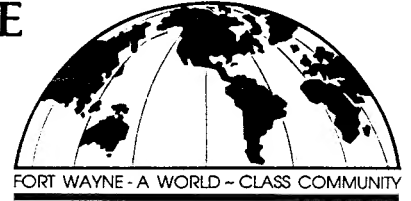
PURCHASE ORDER:                      Yes

ACCOUNT INFORMATION:                      010-021-OFFC-4367  
Information Systems Department

PRIOR APPROVAL:                      DATE:  
(IF APPLICABLE)



# THE CITY OF FORT WAYNE



Paul Helmke  
Mayor

November 10, 1992

The Common Council  
Fort Wayne IN

RE: Ref. No. 2ISD056

*2-92-11-03*

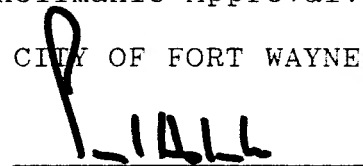
Ladies and Gentlemen:

The Department of Purchases respectfully requests "Prior Approval" for Reference No. 2ISD056, with respect to the Annual Fees for Payroll & Human Resource Software Maintenance for Information Systems Department. The Department would like a "Prior Approval". The cost reflects the only source vendor and should be awarded to Cyborg Systems Inc in the amount of \$29,000.00. This will be assigned a purchase order upon Councilmanic Approval.

DEPARTMENT OF PURCHASES

CITY OF FORT WAYNE

  
Stephen D. Millspaugh, Director

  
Paul Helmke, Mayor

APPROVED:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Sandra Kennedy, City Clerk

An Equal Opportunity Employer  
One Main Street, Fort Wayne, Indiana 46802



BILL NO. S-92-11-03

REPORT OF THE COMMITTEE ON  
FINANCE

MARK E. GiaQUINTA, CHAIR  
DONALD J. SCHMIDT, VICE CHAIR  
EDMONDS, RAVINE

WE, YOUR COMMITTEE ON FINANCE TO WHOM WAS

REFERRED AN (ORDINANCE) (~~RESOLUTION~~) approving the awarding  
of Reference #2ISD056 by the City of Fort Wayne, Indiana, by  
and through its Department of Purchasing and CYBORG SYSTEMS, INC.  
for Information Systems Department

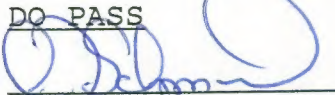
HAVE HAD SAID (ORDINANCE) (~~RESOLUTION~~) UNDER CONSIDERATION  
AND BEG LEAVE TO REPORT BACK TO THE COMMON COUNCIL THAT SAID  
(ORDINANCE) (~~RESOLUTION~~)

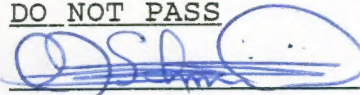
DO PASS

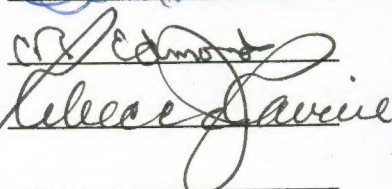
DO NOT PASS

ABSTAIN

NO REC







DATED: 11-24-92

Sandra E. Kennedy  
City Clerk